

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA COMMISSIONER OF TRANSPORTATION

In the Matter of Bauerly Bros., Inc.
Contract No. S98355

FIRST PREHEARING ORDER

The above-entitled matter came on before Administrative Law Judge Steve M. Mihalchick for a prehearing conference on January 26, 1999 in the Second Floor Conference Room, 525 Park Street, St. Paul, Minnesota.

Michael A. Sindt, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103-2106, appeared on behalf of the Department of Transportation. James A. Yarosh, Siegel, Brill, Greupner, Duffy & Foster, P.A., 1300 Washington Square, 100 Washington Avenue South, Minneapolis, Minnesota 55401, appeared on behalf of Bauerly Bros., Inc. Paul W. Iversen, Williams & Iversen, P.A., appeared on behalf of the International Union of Operating Engineers, Local 49.

Based upon all the files and proceedings herein, and for the reasons set forth in the following memorandum, the Administrative Law Judge makes the following:

ORDER

1. The petition of Local 49 to intervene in this matter is granted to the extent that Local 49 may submit briefs on all issues and motions, but will not be a party and shall not be allowed to call witnesses or to cross-examine witnesses.
2. Bauerly Bros.' Motion for Continuance pending resolution of a motion currently before the Ramsey County District Court to hold the Department in contempt for violating certain previous court orders is denied.
3. Two additional matters involving Bauerly Bros. and Project Nos. SP 58034 and SP 58-596-01 will be issued by the Department and consolidated with this matter.
4. This matter shall proceed according to the following schedule:
 1. Any additional petitions for intervention must be filed by February 19, 1999. Any objections to such petitions must be filed by February 26, 1999.
 2. All discovery, including depositions, will be completed by March 26, 1999.

3. All prehearing motions will be filed by April 2, 1999 and responses to any such motions will be filed by April 12, 1999. If requested by the parties or required by the Administrative Law Judge, a hearing on such motions will be held April 16, 1999 at 1:30 p.m. at the Office of Administrative Hearings.
4. The hearing in this matter will commence May 3, 1999 at 9:30 a.m. in the Second Floor Conference Room, 525 Park Street, St. Paul, Minnesota, and continue as necessary through May 7, 1999.

Dated this 29th day of January 1999.

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

The primary issue in this case is whether Respondent Bauerly Bros. is exempt from the requirement of Minn. Stat. § 177.44, subd. 1, to pay prevailing wages to certain employees. That determination involves interpretation of various provisions of that statute and its application to the particular facts of the case. Local 49 seeks intervention to provide historical background on prior interpretations of the statute by the Department. Local 49 does not represent the employees at issue in this case, but the rights of its members are affected indirectly in that if higher wages to non-union employees are created by the application of prevailing wage statute, Local 49's bargaining position in wage negotiations for its employees is enhanced. The Administrative Law Judge finds that this interest is sufficient under the provisions of Minn. Rule 1400.6200 to allow Local 49 limited participation. It appears unlikely that Local 49 can present any evidence relevant to this matter that the Department will not be presenting. Therefore, Local 49 will be limited to submitting briefs on legal issues in this matter.

Bauerly Bros. seeks a continuance on the grounds that it presently has a motion pending in Ramsey County District Court seeking to enjoin the Department from proceeding. That motion was argued on January 27, 1999. The schedule established in this matter is sufficiently long to allow the court to rule before the hearing commences. The parties have been asked to notify the Administrative Law Judge as soon as the District Court rules on Bauerly Bros.' motion.

SMM